

TITLE 30  
State Taxes  
Commodity Taxes  
CHAPTER 51. MOTOR FUEL TAX

**§ 5101. Definitions.**

As used in this chapter:

- (1) "Aviation fuel" is all combustible gases and liquids placed in the supply tank of an aircraft suitable for generating power to propel the aircraft. Examples of aviation fuel are products commonly or commercially known as aviation gasoline (avgas), jet turbine fuel (kerosene), and unleaded gasoline (mogas).
- (2) "Biodiesel" means fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, and meeting the requirements of ASTM D 6751.
- (3) "Biodiesel blend" means a blend of biodiesel fuel meeting ASTM D 6751 with petroleum-based diesel fuel, designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend.
- (4) "Department" means Department of Transportation.
- (5) "Distributor" includes any person, association of persons, firm or corporation, wherever resident or located, who imports or causes to be imported into the State gasoline or special fuel, as defined in this section and referred to collectively as motor fuel, for use, distribution, storage or sale after the gasoline or special fuel reaches the State or who desires to purchase gasoline or special fuel tax free from another distributor for use or resale within this State or for export from this State; and also any person, association of persons, firm or corporation who produces, refines, manufactures or compounds, or causes to be produced, refined, manufactured or compounded gasoline or special fuel as defined in this section within the State.
- (6) "Dyed Special fuel" means any special fuel dyed pursuant to federal regulations cited in 26 CFR 48.4082-1, as amended from time to time.
- (7) "Fuel Compliance Officer" means any employee or agent duly authorized by the Department and certified by the Internal Revenue Service to perform inspections of fuel for purposes of obtaining fuel samples for screening or laboratory analysis to identify evidence of dye.
- (8) "Gasohol" means a motor fuel composed of 1 part anhydrous ethyl alcohol (ethanol) and 9 parts unleaded gasoline.

(9) "Gasoline" includes all products commonly or commercially known or sold as gasoline, including gasohol, casinghead gasoline, natural gasoline, aviation gasoline and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating spark-ignited internal combustion engines. The term "gasoline" does not include liquefied gases such as propane, butane or pentane, or mixtures of the same, nor any product:

- a. Having an ASTM Designation D908 research octane number of less than 70; or
- b. Having a Reid vapor pressure at 100 F. of more than 30 pounds.

(10) "Gross gallons" shall mean a standard U.S. gallon of 231 cubic inches.

(11) "Highway" means every way or place generally open to the use of the public for the purpose of vehicular travel, notwithstanding that they may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair or reconstruction.

(12) "Motor fuel" shall mean and include any substance or combination of substances which is intended to be or is capable of being used for the purpose of propelling or running by combustion any internal combustion engine and sold or used for that purpose.

(13) "Motor vehicle" means any vehicle propelled by an internal combustion engine and licensed or subject to be licensed for operation upon the highways.

(14) "Person" includes every natural person, fiduciary, association of persons or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment or both, the term "person" as applied to an association means and includes the partners or members thereof, and as applied to corporations, the officers thereof.

(15) "Retailer" shall mean and include any person operating a service station, filling station, store, garage or other place of business for the sale of motor fuel for delivery into the propulsion tank or tanks of any vehicle propelled by an internal combustion engine.

(16) "Special fuel" means and includes all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, and all biodiesel and biodiesel blends, except that it does not include gasoline as defined in this section.

(17) "Transporter" shall mean every railroad company, suburban or interurban railroad company, pipeline company, water transportation company and common carrier transporting motor fuel, either in interstate or in intrastate commerce, to points within this State, and every person, except for distributors, transporting motor fuel by whatever manner to a point in this State from any point outside this state.

(18) "Use" means the receipt, delivery or placing of gasoline or special fuel by a distributor into the fuel supply tank or tanks of any motor vehicle while such vehicle is within this State.

***§ 5102. License for distributor of motor fuels; requirement, application, bond and fee.***

(a) No distributor shall receive, use, sell or distribute any motor fuel or engage in business within this State unless such distributor is the holder of an uncanceled license issued by the Department to engage in such business. To procure such license, a distributor shall file with the Department an application under oath and in such form as the Department may prescribe, setting forth:

(1) The name under which the distributor will transact business within the State;

(2) The location, with street number address of its principal office or place of business within this State; and

(3) The name and complete residence address of the owner or the names and addresses of the partners, if such distributor is a partnership, or the names and addresses of the principal officers, if such distributor is a corporation or association; and if such distributor is a corporation organized under the laws of another state, territory or country or the laws of the United States, it shall also file with such application a certified copy of the certificate issued by the Secretary of State of Delaware showing that such corporation is authorized to transact business in the State.

(b) Upon the filing of an application for a license, and concurrently therewith, a bond of the character stipulated and in the amount provided for in § 5106 of this title shall be filed with the Department of Transportation. No license shall be issued upon any application unless accompanied by such bond.

(c) Upon the initial filing of the application for a license, a non-refundable filing fee of \$20 shall be paid to the Department.

***§ 5103. Issuance of distributor's license; term of license.***

(a) The application referred to in § 5102 of this title, in proper form having been accepted for filing, the filing fee paid and the bond having been accepted and approved, the Department shall, except as provided in this chapter, issue to such distributor a license to transact business as a distributor in this State. All licenses issued under this title shall be issued and remain in force until such time as the distributor requests cancellation of the license in accordance with § 5129 or the Department revokes or cancels the license for due cause in accordance with § 5107. Each distributor shall be assigned a license number upon qualifying for a license under this subchapter.

(b) Any company licensed with the Department effective June 30, 2011 that is the holder of an uncanceled motor fuel distributor, special fuel supplier, special fuel user, or special dealer will be issued a distributor's license in accordance with this title at no cost.

***§ 5104. Refusal of distributor's license; grounds.***

If any application for a license to transact business as a distributor in this State shall be filed by any person whose license shall at any time theretofore have been cancelled for cause, or in case the Department shall be of the opinion that the application is not filed in good faith or that the application is filed by some person as a subterfuge for the real person in interest whose license or registration shall therefore have been cancelled for cause, the Department, after a hearing, of which the applicant shall be given 5 days' notice in writing and at which the applicant shall have the right to appear in person or by a counsel and present testimony, may refuse to issue to such person a license to transact business as a distributor in this State.

***§ 5105. Assignability of distributor's license.***

The license issued under this subchapter by the Department of Transportation shall not be assignable and is valid only for the distributor in whose name it was issued.

***§ 5106. Bond of licensed distributor.***

(a) Every distributor shall file with the Department of Transportation a bond in the approximate sum of 3 times the average monthly motor fuel tax due or estimated to be due by such distributor under the existing law of the State. In no case shall such bond be less than \$5,000 nor more than \$200,000. Every bond filed with and approved by the Department shall, without the necessity of periodic renewal, remain in force and effect until such time as the distributor's license is revoked for cause, or otherwise cancelled or surrendered.

(b) The bond shall be in such form as may be approved by the Department, and shall be executed by a surety company to be approved by the Department and duly licensed to do business under the laws of this State. The bond shall be payable to the State, and be conditioned upon the prompt filing of true reports and the payment by such distributor to the Department of any and all fuel taxes levied or imposed by this State, together with any and all penalties and/or interest thereon, and generally upon faithful compliance with the provisions of this chapter.

(c) If liability upon the bond thus filed by the distributor with the Department of Transportation shall be discharged or reduced, whether by judgment rendered, payment made or otherwise, or if in the opinion of the Department any surety on the bond theretofore given shall have become unsatisfactory or unacceptable, then the Department may require the filing of a new bond with like surety as hereinbefore provided in the same amount, failing which, the Department shall forthwith cancel the license of the distributor. The Department shall promptly notify all licensed distributors of any such cancellation. If the new bond is furnished by the distributor as above provided, the Department shall cancel and surrender the bond of the distributor for which such new bond shall be substituted; provided, however, that such bond shall not be cancelled if any liability shall have accrued under the provisions thereof which shall be still outstanding.

(d) If the Department of Transportation, after a hearing of which the distributor shall be given 5 days' notice in writing, shall decide that the amount of the existing bond is insufficient to insure payment to the State of the amount of the tax and any penalties and interest for which the

distributor is or may at any time become liable, then the distributor shall forthwith upon the written demand of the Department file an additional bond in the same manner and form with like security thereon as hereinbefore provided. The Department shall forthwith cancel the license certificate of any distributor failing to file an additional bond as herein provided. The Department shall promptly notify all licensed distributors of any such cancellation.

(e) Any surety on any bond furnished by any distributor as above provided, upon written request mailed to the Department of Transportation, certified mail, return receipt requested, shall be released and discharged from any and all liability to the State accruing on such bond. Upon receipt of such request, the Department shall forthwith acknowledge in writing the receipt of said request and shall therein inform the surety that it shall be released and discharged from any and all liability to the State accruing on such bond after the expiration of 60 days from the date on which the Department received the surety's request for release and discharge. Simultaneously, the Department shall also notify the distributor who furnished such bond of the fact that the surety will be released and discharged from any and all liability on a date certain. The distributor shall further be advised that unless it shall, on or before the expiration of such 60-day period, file with the Department a new bond in the amount and form hereinbefore in this section provided, the Department shall forthwith cancel the license of the distributor. The Department shall promptly notify all licensed distributors of any such cancellation.

***§ 5107. Revocation, cancellation and surrender of license and bond.***

(a) The Department may revoke the license of any distributor for reasonable cause. Before revoking any such license the Department shall notify the distributor to show cause within 60 days of the date of the notice why such license should not be revoked; provided, however, that at any time prior to or pending such hearing the Department may, in the exercise of reasonable discretion, suspend such license. The Department shall promptly notify all licensed distributors of any such suspension or revocation.

(b) The Department shall cancel any license to act as a distributor immediately upon surrender thereof by the holder. If the license of any distributor shall be cancelled by the Department and if the distributor shall have paid to the State of Delaware all taxes, penalties and interest due and payable by it under the laws of this State, then the Department shall cancel and surrender the bond or other surety theretofore filed by said distributor. The Department shall promptly notify all licensed distributors of any such cancellation.

(c) The Department may notify all licensed distributors of suspensions or revocations using electronic mail or by posting of information on the Department's Web site.

***§ 5108. Records of Department of Transportation.***

The Department of Transportation shall keep and file all applications and bonds with an alphabetical index thereof, together with a record of all licensed distributors. Reports required by this chapter, exclusive of schedules, itemized statements and other supporting evidence annexed thereto, shall at all reasonable times be open to the public.

***§5109. Display of license.***

Every person holding a distributor license authorizing them to conduct business in the State shall expose such license in a conspicuous manner in the principal office or place of business of such person.

***§5110. Form and signature of licenses.***

The Secretary of Transportation, or the Secretary's delegate, shall prepare blank licenses for each licensed distributor mentioned and enumerated in this part in such form as the Secretary deems proper. The licenses shall be signed by the signature or by the facsimile signature of the Secretary of Transportation and shall each bear the date of issue.

***§ 5111. Levy and rate of tax; collection.***

(a) There is hereby levied and imposed a tax of 23 cents per gross gallon on all gasoline sold or used within the State unless otherwise exempted in accordance with § 5112, until increased or decreased by the State. By virtue of the pledge and assignment of motor fuel tax revenues by the State to the Delaware Transportation Authority, said tax shall not be decreased during the period any bonds of that Authority are outstanding and unpaid.

(b) There is hereby levied and imposed a tax of 22 cents per gross gallon on all special fuel sold within the State unless otherwise exempted in accordance with § 5112, until increased or decreased by the State. By virtue of the pledge and assignment of motor fuel tax revenues by the State to the Delaware Transportation Authority, said tax shall not be decreased during the period any bonds of that Authority are outstanding and unpaid.

(c) The tax shall be collected by and paid to the State but once in respect to any motor fuel. Nothing in this section shall be construed to exempt from the tax any distributor with respect to motor fuel used in making such distribution. The tax shall be collected in the manner hereinafter provided.

***§ 5112. Exempt sales of motor fuel.***

(a) The tax imposed by this chapter shall not apply to motor fuel:

(1) Sold and delivered to and used by the United States or any of the governmental agencies thereof;

(2) Sold or delivered under the protection of the interstate commerce clause of the Constitution of the United States;

(3) Sold by a distributor licensed by the Department of Transportation to another distributor licensed by the Department of Transportation;

(4) Sold and delivered to and used by the State and every political subdivision thereof;

(5) Sold and delivered to and used by volunteer fire companies in any of their official vehicles and veteran or civic organizations in their ambulances when such vehicles are used on a voluntary, nonprofit basis. The fuel supply tanks maintained under this section must be for the exclusive use of said vehicles.

(6) Sold and delivered to and used by any person for purposes of operation of aircraft.

(b) The Department may, for purposes of identification of the above agencies or organizations, require that an exemption certificate issued by the Department of Transportation be on file with the Department and the distributor from which the fuel is purchased.

***§ 5113. Distributor's taxable sales of motor fuel; what is included.***

The distributor's taxable sales shall, for the purpose of this chapter, include all motor fuels delivered to persons not the holder of an uncanceled distributor license issued by the Department of Transportation, and delivered to retailers, including motor fuels delivered to retail outlets on consignment or to retail outlets owned or operated by the distributor.

***§ 5114. Monthly reports of distributors.***

(a) Reports. -- For the purpose of determining the amount of liability for the tax herein imposed, each licensee shall file with the Department, on forms prescribed by the Department, a monthly tax report. Such report shall contain a declaration by the person making same to the effect that the statements contained therein are true and are made under penalties of perjury which declaration shall have the same force and effect as a verification of the report and shall be in lieu of such verification. The report shall show such information as the Department may reasonably require for the proper administration and enforcement of this chapter.

(b) The tax-free and tax-paid activity shall be reported on the monthly distributor's report at gross gallons.

(c) The fact that a distributor's name is signed to such statements shall be prima facie evidence for all purposes that the reports were actually signed by such distributor or a duly authorized agent. Such statements shall contain a declaration by the person making the same, to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the return and shall be in lieu of such verification.

(d) The monthly statements or payments of tax, as provided in § 5113 of this title, shall be considered to have been duly and timely filed if such statements or payments are deposited in the United States mail with postage prepaid on or before the twenty-fifth day of a given calendar month; provided, however, that for good cause the Department may grant a licensee a reasonable extension of time.

In lieu of depositing tax payments in the United States mail, a licensed motor fuel distributor may hand deliver said payment to the Department or the Department may require licensed motor fuel distributors to make electronic transfers of such funds to the appropriate state account.

(e) When the twenty-fifth day of a given month falls on a weekend or state holiday, the due date of the statement and tax shall be the next following business day of the State.

***§ 5115. Payment of tax by distributor.***

(a) At the time of rendering the statement required by § 5114(a) of this title, the distributor shall pay to the Department of Transportation the tax or taxes levied by this chapter on all motor fuel sold and/or used within this State during the preceding calendar month.

(b) Distributors averaging monthly sales and/or use of 500,000 or more gallons over a 12-month period ending April 30 each year shall, when complying with § 5113 of this title, pay to the Department of Transportation in June each year the tax or taxes on 75% of the gallons of gasoline estimated to be sold and/or used during said month of June. The balance of the tax due on the actual sales and/or use in June shall be paid on or before the twenty-fifth day of the next calendar month.

***§ 5116. Penalties for failure to file reports or pay tax when due.***

(a) When any distributor fails to file monthly reports with the Department of Transportation as required by § 5114 of this title or when such distributor fails to pay the Department the amount of taxes due to this State as required by § 5115 of this title, a penalty of \$5.75 per business day shall accrue up to a maximum of \$28.75 for each report. For each report filed more than 5 business days late, the penalty shall be \$28.75 or 12 percent of the tax due, whichever is greater, for each such report. Any tax due shall also bear interest at the rate of 1 percent per month, or fraction thereof, until same is paid; however, the Department may waive all or any part of the penalty and interest when it is established to the satisfaction of the Department that failure to file the monthly report or pay the tax by the twenty-fifth day of the month was not with intent to violate the law.

(b) A month, for purposes of calculating interest in this chapter, shall be from the twenty-sixth day of a given month through the twenty-fifth day of the following month.

***§ 5117. Fraudulent report.***

If any licensee shall file a false or fraudulent report with intent to evade the tax imposed by this chapter, there shall be added to the amount of deficiency determined by the Department a penalty equal to 25 percent of the deficiency together with interest at 1 percent per month, or fraction thereof, on such deficiency from the date such tax was due to the date of payment thereof in addition to all other penalties prescribed by law.

***§ 5118. Examination of return.***



(a) Deficiency or overpayment. -- As soon as practicable after any return is filed, the Department shall examine it to determine the correct amount of tax. If the Department finds that the amount of tax shown on the return is less than the correct amount, the Department shall notify the distributor in writing of the amount of the deficiency proposed to be assessed. If the Department finds that the tax has been paid by the distributor is more than the correct amount, the Department shall credit the overpayment against any taxes to which this chapter applies and which are due to this State by the distributor and shall refund the difference upon request by the distributor.

(b) No return filed. -- Whenever any distributor neglects or refuses to make and file any report for any calendar month as required by §5114(a) or files an incorrect or fraudulent report, the Department shall determine, from any information obtainable in its office, or elsewhere, the number of gallons of motor fuel with respect to which the distributor has incurred liability under the motor fuel tax laws of this State. There shall be added to this deficiency interest at the rate of 1 percent per month, or fraction thereof, from the date such tax was due to the date of payment in full thereof.

(c) Notice of proposed assessment. – A notice of proposed assessment shall:

(1) Be in writing,

(2) State the tax, interest, penalty, additional amount, or addition to tax is proposed for assessment and is due, and

(3) Set forth the amount and reason for the proposed assessment.

Such notice shall be mailed by the Department within the time limit provided by § 5122 of this title (by certified or registered mail if the amount of the proposed assessment exceeds \$500) to the taxpayer at the distributor's last know address.

(d) Supplemental notice of proposed assessment. – The Department may, at any time within the period prescribed for issuance of a notice of proposed assessment, issue a supplemental notice of proposed assessment, subject to the other provisions of this section, whenever it is found that any notice is imperfect or incomplete in any material respect. Any reference in this title to a notice of proposed assessment shall be deemed to include a reference to a supplemental notice of proposed assessment issued under the authority of this subsection.

(e) In any action or proceeding for the collection of the motor fuel tax and/or penalties or interest imposed in connection therewith, an assessment by the Department of the amount of the tax due and/or interest or penalties due to the State shall constitute prima facie evidence of the claim of the State, and the burden of proof shall be upon the distributor to show that the assessment was incorrect and contrary to law.

***§ 5119. Assessment final if no protest.***

Sixty days after the date on which it is mailed a notice of proposed assessment under § 5118(c) of this title shall constitute a final assessment of the amount of tax, interest, penalties, additional amounts and additions to the tax specified in such notice, excepting only those amounts as to which the taxpayer has filed a timely protest with the Department under § 5120 of this title.

***§5120. Protest by taxpayer.***

(a) Within 60 days after the date of the mailing of a notice of proposed assessment under § 5118(c) of this title or the date of the mailing of a notice of disallowance of a claim for credit or refund under § 5125 of this title, the distributor may file with the Secretary a written protest against the proposed assessment or disallowance in which the distributor shall set forth the grounds upon which the protest is based. If such protest is filed, the Secretary shall reconsider the proposed assessment or disallowance of claim for credit or refund and, if the taxpayer has so requested shall grant the distributor or the distributor's authorized representative an oral hearing.

(b) Written notice of the Secretary's determination shall be mailed to the taxpayer by certified or registered mail, and such notice shall set forth the Secretary's findings of fact and the basis of any determination which is adverse, in whole or in part, to the distributor.

(c) Any person shall have the right to appeal within 60 days the decision of the Secretary of Transportation concerning redetermination to the Superior Court of this State.

***§ 5121. Collection by Department of Transportation of delinquent taxes.***

If any distributor shall, for a period in excess of 10 days, be in default of payment of any taxes, penalties and/or interest thereon, which are payable under the terms of this subchapter, the Department of Transportation may issue a warrant under its official seal, signed by its Secretary, and directed to the sheriff of any county of the State, commanding the sheriff to levy upon and sell the goods and chattels of such debtor, without exemption, found within the sheriff's jurisdiction for payment of the amount of such delinquency together with any additional penalties and interest which have accrued and the cost of executing the warrant and conducting the sale, and to return such warrant to the Department and to pay the Department the money collected by virtue thereof within the time specified in the warrant which shall be not less than 20 or more than 60 days from the date the warrant was issued. The sheriff to whom any such warrant is directed shall proceed upon the same in all respects with like effect and in the same manner as prescribed by law in respect to executions issued against goods and chattels upon judgments by a court of record, and the sheriff shall be entitled to the same fees for services in executing the warrant to be collected in the same manner. The foregoing notwithstanding, nothing in this subsection shall be construed as forfeiting or waiving any rights of the Department or of this State to collect such taxes by an action upon any bond that may be filed with the Department under any provision of this subchapter where by suit or otherwise; and in case such suit, action or other proceeding shall have been instituted for the collection of said tax, such suit, action or other proceeding shall not be construed as waiving any other right herein provided.

***§ 5122. Limitations on assessment.***

(a) Except in the case of a false or fraudulent report, or of neglect, failure or refusal to make a report, every deficiency shall be assessed under this section within 3 years after the twenty-fifth day of the next succeeding calendar month following the monthly period for which the amount is proposed to be determined or within 3 years after the report is filed, whichever period expires the later.

(b) If no return is filed, or if a false and fraudulent return is filed with intent to evade any tax imposed by this title, a notice of proposed assessment under § 5118(c) of this title may be mailed to the taxpayer at any time.

(c) Where, before the expiration of the time prescribed in this section for the mailing of a notice of proposed assessment under § 5118(c) of this title, both the Secretary and the taxpayer shall have consented in writing to such assessment after such time, the proposed assessment may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

***§ 5123. Rules and regulations.***

The Department may prescribe reasonable rules and regulations for the carrying out of this chapter and all forms of reports required by this chapter.

***§ 5124. Deposit of receipts by Department of Transportation.***

All money received by the Department under this chapter shall be deposited, not later than the close of the business day next following such receipt, to the credit of the Delaware Transportation Authority pursuant to Chapter 13 of Title 2, as amended, and any resolution or indenture of the Delaware Transportation Authority, authorizing the issuance of bonds to finance the costs of transportation facilities described in said title, is to be used to finance the costs of roads, highways and other transportation facilities and not to defray the expenses and obligations of the general government of the State.

***§ 5125. Refunds of gasoline taxes, and erroneous motor fuel taxes assessed; erroneous or illegal refund payments.***

(a) The Secretary of Transportation shall refund out of the General Fund of this State the tax paid on gasoline upon receipt of written authorization from the Department so to do, which written authorization shall be given, for gasoline used by any person for the purpose of operating stationary engines, tractors, motorboats, airplanes or aircrafts, or any other purpose except in motor vehicles licensed, or subject to being licensed, for operation upon any of the public highways of the State.

(b) Such application shall be in such form as shall be prescribed by the Department, shall be under the penalties of perjury, and shall state the quantity of gasoline with respect to which refund is claimed, the purpose for which said gasoline was used, date of purchase, from whom purchased, and such other information as the Department shall require.

(c) Such application shall be accompanied by the original invoice showing such purchase, together with evidence of the payment thereof.

(d) All applications for refunds must be filed with the Department within 12 calendar months from the date of the purchase or invoice of the gasoline with respect to which a tax refund is claimed.

(e) The conditions of this section having been fully complied with, the Department of Transportation shall determine the amount of the refund due on such application and authorize the Secretary of Transportation in writing to pay such amount within 60 days from the time of filing of the complete application for refund.

(f) There shall be refunded out of the General Fund of this State any tax, penalty or interest erroneously or illegally collected under this chapter. A refund claim prepared in such manner as the Department may prescribe shall be filed with the Department within 1 year from the earlier of: (1) The date of the payment; or (2) the date the payment was required to be made. The claim must be in such form as may be prescribed by the Department, and shall specifically set forth the circumstances entitling the claimant to the refund. Upon satisfactory verification of the claim, the Department shall certify the amount thereof to the State Treasurer who shall thereupon draw a warrant to the claimant forthwith.

(g) If a refund granted under this section shall later be determined to have been erroneously or illegally paid in whole or in part, the Department may demand, within 3 years from the date of such payment, that restitution be made to the General Fund of this State. Interest on said monies assessed shall accrue at the rate of 1% per month, or fraction thereof, from the date of notification by the Department of Transportation until receipt of payment.

#### **§ 5126. Retailers**

(a) No manufacturer of petroleum products shall open a major brand, secondary brand or unbranded retail dealer outlet in the State, that would be operated by company personnel, a subsidiary company, or a commissioned agent.

(b) A retailer shall maintain proper accounting records of all purchases and sales of motor fuels and the inventory on hand on the first day of each month. Such records shall be maintained for a period of at least three years for inspection by the Department at regular intervals. Any discrepancies found to exist for which a satisfactory explanation cannot be submitted shall be subject to the tax imposed by § 5111 against such retailer.

***§ 5127. Transporter license; penalty for failure to file report.***

(a) No transporter shall act as a common carrier of motor fuels within this State unless such transporter is the holder of an uncanceled license issued by the Department to engage in such business. To procure such license, a transporter shall file with the Department an application under oath and in such form as the Department may prescribe, setting forth:

(1) The name under which the distributor will transact business within the State;

(2) The location, with street number address of its principal office or place of business within this State; and

(3) The name and complete residence address of the owner or the names and addresses of the partners, if such transporter is a partnership, or the names and addresses of the principal officers, if such transporter is a corporation or association; and if such transporter is a corporation organized under the laws of another state, territory or country or the laws of the United States, it shall also file with such application a certified copy of the certificate issued by the Secretary of State of Delaware showing that such corporation is authorized to transact business in the State.

(b) Every transporter shall report, under penalty of perjury, to the Department on forms prescribed by the Department all deliveries of motor fuel so made to points within this State or exported from points within this state to destinations outside of the State.

(c) The reports shall cover monthly periods, shall be postmarked by the United States Postal Service on or before the twenty-fifth day of the calendar month immediately following the month covered by the report, shall show the name and address of the person to whom the deliveries of motor fuel have actually and in fact been made, and such other additional information relative to shipments of motor fuel as the Department may require.

(d) If any carrier fails to file a report as required by this section, a penalty of \$5.00 per business day shall accrue until said report is filed up to a maximum amount of \$25 for each report; however, the Department may waive all or part of the penalty if it is established to the satisfaction of the Department that failure to file the report was not with intent to violate the law.

***§ 5128. Retention of records by distributors, retailers, or transporters; penalties.***

(a) Each distributor, retailer, or transporter shall maintain and keep, for a period of 3 years, such records of motor fuel received, used, sold and/or delivered within this State by such distributor or retailer, together with invoices, bills of lading, and other pertinent records and papers as may be required by the Department for the reasonable administration of this chapter.

(b) Whoever violates this section shall be fined not more than \$1,000 and the costs of prosecution, or imprisoned not more than 1 year, or both.

**§ 5129. Inspection of records.**

(a) The record of all purchases, receipts, sales, distribution and use of motor fuel of every distributor or retailer shall at all times during the business hours of the day be subject to inspection by the Department or by any agent or employee duly authorized by it.

(b) The Department shall make an inspection of the records of all purchases, receipts, sales, distribution and use of motor fuel of every distributor or retailer to the extent deemed necessary by the Secretary, by or through such agent or employee as may be duly authorized by it, for the purpose of ascertaining whether the distributors or retailers are complying with this chapter. If it is found that the distributors or retailers are not complying with this chapter, the Department shall report to the Attorney General in what respects the distributors or retailers are failing to so comply with this chapter.

**§ 5130. Discontinuance, sale or transfer of business by distributor; penalties.**

(a) Whenever a person ceases to engage in business as a distributor within this State by reason of the discontinuance sale or transfer of the business of such distributor, the distributor shall notify the Department in writing at least 10 days prior to the time the discontinuance, sale or transfer takes effect. Such notice shall give the date of discontinuance and, in the event of a sale or transfer of the business, the date thereof and the name and address of the purchaser or transferee thereof. All taxes, penalties and interest under this chapter not yet due and payable under the provisions of this chapter shall, notwithstanding such provisions, become due and payable concurrently with the discontinuance, sale or transfer, and the distributor shall concurrently with such discontinuance, sale or transfer make a report and pay all such taxes, interest and penalties, and surrender to the Department the license theretofore issued to the distributor or by the Department.

(b) Unless the notice provided for in subsection (a) of this section shall have been given to the Department, the purchaser or transferee shall be liable to this State for the amount of all taxes, penalties and interest under this chapter, accrued against any such distributor so selling or transferring a business, on the date of such sale or transfer, but only to the extent of the value of the property and business thereby acquired from such distributor.

(c) Whoever violates this section shall be fined not less than \$50 nor more than \$300 and the costs of the prosecution, or imprisoned not more than 1 year, or both.

**§ 5131. Presumption.**

For the purpose of enforcing this chapter, it shall be prima facie presumed that all motor fuel received by any person into storage having dispensing equipment designed to fuel motor vehicles is to be transferred or delivered by that person into the fuel supply tanks of motor vehicles.

**§ 5132. *Reciprocal exchange of data.***

(a) The Department shall, upon request from the officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, the provinces or the Dominion of Canada, forward to such officials any information which it may have relative to the receipt, storage, delivery, sale, use or other disposition of special fuel by any special fuel dealer or special fuel user; provided such other such entities furnish like information to this State.

(b) The Secretary of the Department of Transportation may enter into cooperative agreements with other agencies within the State for exchange of information and to perform joint investigations of alleged tax evasion.

**§ 5133. *Penalties.***

(a) Acts forbidden. -- It shall be unlawful for any person to:

(1) Engage in business in this State as a distributor without being the holder of an uncanceled license to engage in such business;

(2) Refuse or knowingly and intentionally fail to make and file any statement required by this chapter in the manner or within the time required;

(3) Knowingly withhold or fail to remit monies due under this chapter, with intent to evade or to aid in the evasion of the tax imposed herein;

(4) Refuse to permit a duly authorized representative of the Department of Transportation to examine records as provided by this chapter;

(5) Knowingly make any false statement or conceal any material fact in any record, report or affidavit provided for in this chapter, with intent to evade or to aid in the evasion of the tax imposed herein;

(6) Knowingly make, or aid or assist any other person in making, a false statement in a report to the Department of Transportation or in connection with an application for refund of any tax;

(7) Assign or attempt to assign a license to act as a motor fuel distributor;

(8) Receive or sell motor fuel in this State into the supply tank or tanks of a motor vehicle, or receive taxable motor fuel into bulk storage tanks, from a person not holding a valid license as a motor fuel distributor, knowingly and with intent to evade or to aid in the evasion of the tax imposed herein to;

(9) Deliver or place motor fuel in this State into the supply tank or tanks of a motor vehicle, or deliver or place taxable motor fuel into bulk storage tanks, to a person not holding a valid

license as a motor fuel distributor, or to a person not a holder of a valid motor fuel tax exemption certificate, without holding a valid license as a motor fuel distributor, and without collecting the lawful tax imposed herein, knowingly and with intent to evade or to aid in the evasion of the tax imposed herein;

(10) Fail to keep and maintain the books and records of quantities of motor fuels received, produced, refined, manufactured, compounded, sold, used and/or delivered in this State required by this chapter;

(11) Permanently remove, replace, alter or render inoperable any volumetric measuring device or "totalizer" of any pump dispensing motor fuel subject to this chapter, knowingly and with intent to deceive, defraud or evade the tax imposed herein;

(12) Sign and deliver or cause to be delivered to the Department any report required by this subchapter knowing that it contains false statements material to the computation of the tax imposed by this subchapter.

(b) Any person violating subsection (a) of this section is guilty of a class A misdemeanor; provided, however, that if the violation results in an evasion or wrongful withholding of motor fuel tax amounting to more than \$500, then the violation shall constitute a class E felony. Any person who has once been convicted of any violation of subsection (a) of this section and who thereafter is convicted of any subsequent violation of subsection (a) of this section shall be guilty of a class E felony. The Superior Court shall have the exclusive jurisdiction over violations of this chapter.

(c) Whoever violates any provision of this chapter, a penalty for which is not otherwise provided shall, for the first offense, be fined not more than \$500, or imprisoned not more than 6 months, or both, and for a second and any subsequent offense shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both. In addition to the penalty imposed in conformity to the above, the defendant shall be required to pay all taxes and penalties due the State under this chapter and/or pay to the State any other monies wrongfully withheld or illegally refunded. Each day or part thereof during which any person shall engage in business as a distributor without being the holder of an uncanceled license shall constitute a separate offense within the meaning of this section.

(d) The fine and imprisonment provided for in this section shall be in addition to any other penalty imposed by any other provision of this chapter.

(e) The Delaware State Police are authorized and directed to assist in the enforcement of this section.

#### ***§ 5134. Collection of bad checks; service charge; interest.***

If a check received in payment of monies due the Department under this chapter shall be returned to the Department by the maker's bank because of insufficient funds, closed account, stopped payment or any other reason, there shall be imposed upon the maker a service charge of \$10 and



interest at the rate of 1% per month, or fraction thereof, shall accrue on the tax, if any, from the date such tax was due to be paid. A statement shall be sent to the maker demanding payment within 15 days of the original amount of the check plus the added service charge, interest, if any, and the cost of the postage incurred in mailing the statement. Failure of the maker to respond to the demand within 15 days shall constitute cause for the Department to suspend the maker's distributor license and 30 days thereafter, to suspend or revoke the maker's distributor license. The Department shall promptly notify all licensed distributors of any such suspension or revocation.

***§ 5135. Prohibiting use of dyed special fuel on highways; Violations and penalties.***

**(a) Notices with respect to dyed special fuel.**

(1) A notice, stating: "dyed fuel, nontaxable use only, penalty for taxable use" shall be:

- a. Provided by the terminal operator to any person that receives dyed fuel at a terminal rack of that operator;
- b. Provided by the seller of dyed fuel to its buyer if the fuel is located outside the bulk transfer or terminal system and is not sold from a retail pump posted in accordance with the requirements of paragraph (a)(1)c. of this section;
- c. Posted by a seller on any retail pump where it sells dyed fuel for use by its buyer.

(2) The notice required under paragraph (a)(1)a. or b. of this section shall be provided at the time of the removal or sale and shall appear on shipping papers, bills of lading and invoices accompanying the sale or removal of the fuel.

(3) The Department may designate any federal notice provision which is substantially similar to a provision of this subsection as satisfying any notice requirement of this subsection.

**(b) Dyed diesel fuel not to be used on public highways.**

(1) A person may not operate a motor vehicle on the public highways of this State if the fuel supply tanks of the vehicle contain dyed special fuel unless permitted to do so under a Federal or Delaware law or regulation relegating to the use of dyed special fuel on the highways.

(2) A person may not sell or deliver any dyed special fuel knowing or having reason to know that the fuel will be consumed in a highway use. A person who dispenses dyed special fuel from a retail pump that is not properly labeled with the notice required by subsection (a) of this section or who knowingly delivers dyed special fuel into the storage tank of such a pump shall be presumed to know the fuel will be consumed on the highway.

**(c) Enforcement.**

Any certified Fuel Compliance Officer or other person authorized by the Department may enter any place where fuels are used, produced or stored and may physically inspect any tank, reservoir or other container that can be used for the production, storage, use or transportation of special fuel, special fuel dyes or special fuel markers. Inspection may also be made of any equipment used for or in connection with the production, storage or transportation of special fuel, special fuel dyes or special fuel markers. This includes any equipment used for the dyeing or marking of special fuel. Books, records and other documents may be inspected to determine tax liability. An agent may detain a vehicle, vessel or railroad tank car placed on a customer's siding for the use or storage for the purpose of inspecting fuel tanks or fuel storage tanks as necessary to determine the amount and composition of the fuel. An agent may take and remove samples of diesel fuel in reasonable quantities necessary to determine the composition of the fuel.

(d) Penalties.

Any person who violates any provision of subsections (a) and (b) of this section including refusal to allow an inspection as set forth herein, shall for the first offense be fined not more than \$1,000, or imprisoned not more than 90 days, or both. For a second and any subsequent offense the person shall be fined not more than \$2,000, or imprisoned not more than 6 months, or both.

(e) Disposition of fees, fines and forfeitures.

All fees, fines and penalties collected in the enforcement of this section shall be paid into the Transportation Trust Fund established under Title 2.

(f) Enforcement.

The Delaware State Police is authorized and directed to assist in the enforcement of this section.

(g) Cooperative agreements.

The Secretary of the Department of Transportation may enter into cooperative agreements with other states and federal agencies for exchange of information and to perform joint investigations of alleged dyed diesel fuel violators.

**SYNOPSIS**

This Bill will simplify the administration of the motor fuel tax law by creating one single master license that will allow a company to conduct business for all types of fuel activity within the State.